

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No.: 3:10-cv-210-FDW-DSC**

WILLIAM NORKUNAS, Individually,)
)
Plaintiff,)
)
v.)
)
PARK ROAD SHOPPING CENTER, INC.,)
)
Defendant.)
)

ORDER

THIS MATTER is before the Court on Defendant's "Motion for Protective Order with Respect to Plaintiff's Rule 34 Notice of Inspection" (document #16) and the parties' associated briefs and exhibits. See documents ## 17-18.

This is an action for injunctive relief and attorney's fees pursuant to Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 ("ADA") for removal of barriers to access at Defendant's place of public accommodation, the Park Road Shopping Center in Charlotte, North Carolina.

Relevant to the subject Motion, on November 10, 2010, Plaintiff sent Defendant a Rule 34 Notice of Inspection stating that Plaintiff's expert would inspect "any and all areas of public accommodation" at the shopping center on November 30, 2010.

On November 17, 2010, Defendant filed its Motion for Protective Order. Defendant first contends that Plaintiff lacks standing as a private individual to conduct an inspection. In the alternative, Defendant seeks an order confining the inspection to the fourteen items listed in paragraph ten of the Complaint.

Having carefully reviewed the parties' submissions, the Court concludes as an initial matter

that arguments concerning Plaintiff's standing should be presented in the form of a Motion to Dismiss. The Court has not considered these arguments in relation to the present discovery dispute.

The Court also concludes in its discretion that rather than being allowed to conduct a wide-ranging inspection of "any and all areas" of the shopping center, Plaintiff should be limited to those areas which he identified in his Complaint. Accordingly, the Court will grant in part and deny in part Defendant's Motion.

ORDER

IT IS HEREBY ORDERED that:

1. Defendant's "Motion for Protective Order with Respect to Plaintiff's Rule 34 Notice of Inspection" (document #16) is **GRANTED IN PART** and **DENIED IN PART**, that is, the Rule 34 inspection shall be limited to the fourteen items listed in paragraph ten of the Complaint.
2. The Clerk of Court is directed to send copies of this Order to counsel for the parties; and to the Honorable Frank D. Whitney.

SO ORDERED.

Signed: November 18, 2010



David S. Cayer
United States Magistrate Judge

